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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,064	07/06/2001	Barry J. Barclay	545P007	7820

7590 08/13/2003  
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EXAMINER

DODSON, SHELLEY A

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/13/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/900,064

Applicant(s)  
BARCLAY, BARRY J.

Examiner  
SHELLEY A. DODSON

Art Unit  
1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on ELECTION DATED 05-29-2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-73 is/are pending in the application.
- 4a) Of the above, claim(s) 43-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☒ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 05 6) ☐ Other:

**DETAILED ACTION**

Claims 1-42 elected in this case on May 29, 2003 filed July 06, 2001.

Applicant's elected claims are drawn to a method of treating or preventing disease or disorder caused by UV radiation.

**Claim Rejections - 35 USC § 103**

15.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16.

Claims 1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strickland et al. USP 6,251,878 B1 .

Strickland et al. disclose methods and compositions for the prevention and/or treatment of immunological damage to skin exposed to ultraviolet radiation. In column 11, lines 40-60, Strickland

discloses that vitamins are useful in the referenced composition. the reference specifically discloses vitamin B3, niacinamide, B12, cyanocobalamin and B9, folic acid as some of the useful vitamins in the referenced methods and compositions. In column 11, lines 17-39, Strickland further discloses that other sunscreens or UV absorbers may also be useful in the referenced invention to protect the skin. Specifically, cinnamates, salicylates, benzophenones amino benzoic acids and mixtures thereof. In column 12, Strickland further discloses that said therapeutic compositions may be administered orally, nasally, rectally, vaginally, topically and by injection methods. In column 13, Strickland further discloses that the oral compositions may be in the form of solutions, pills, suspensions, tablets, capsules etc. In columns 7 through 9 Strickland discloses that the compositions may contain many different cosmetically acceptable adjuvants or additives which are claimed by the applicant in the instant case. Strickland discloses each and every aspect of the invention as claimed by the applicant in the instant invention with the exception of specifically disclosing the structural formula of vitamin B12 claimed by the applicant. It would have been obvious to one of ordinary skill in this art at the time the invention was made to have employed applicant's specific choice of vitamin B12 or derivative thereof

into the method and composition of Strickland in view of the teachings of Strickland that numerous forms of vitamin B12, B3, B6 and B9 may be employed in compositions useful in treating or preventing disease or disorders of the skin caused by ultraviolet radiation. This is in the absence of any clear showing of unexpected results attributable to the specific vitamin B12 formula claimed by applicant in the instant case.

17.

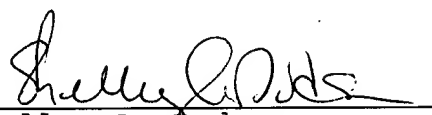
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley A. Dodson whose telephone number is (703) 308-2445. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 5:00 p.m. The examiner can also be reached on alternate Fridays.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7922. A facsimile center has been established in Crystal Mall 1, Room 7C11. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. This new location should be used in all instances when faxing any correspondence numbers to Group 1600. The Patent examining Fax Center telecopier numbers are (703) 872-9306 and (703) 308-4556. Use of the new Crystal Mall 1 Center will facilitate rapid delivery

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of materials to the Group. The faxing of all papers must conform with the notice published in the Official Gazette, 109 O.G. 30 (November 15, 1989).

  
Shelley A. Dodson  
Primary Examiner  
Art Unit 1616

August 10, 2003